



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 24, 2023

IN THE MATTER OF:

Appeal Board No. 628342

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 3, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance on behalf of the claimant. By decision filed February 17, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. More testimony and evidence should be taken with respect to the circumstances under which the claimant's employment ended before the case is decided. To that end, the parties are placed on notice that we have determined that there is good cause to additionally consider whether the claimant resigned because of treatment he received from the employer after he requested, and was denied, a raise in pay. The parties further are advised that the Administrative Law Judge will also consider whether the claimant took reasonable steps to preserve his employment, which shall include, but not be limited to, what, if any, steps he took before resigning to obtain alternate housing in New York State within commuting distance of his job that would accommodate both his immediate family and his parents, or alternate assistance for his parents, such as senior housing, home health care, meal programs, etc; and whether he brought his concerns about mistreatment to the employer prior

to his resignation.

At the remand hearing, the claimant should produce the following: his and his wife's 2021 and 2022 complete federal income tax returns and paystubs; all bills, statements, and receipts relative to the claimant's household and personal expenses, as well as all banking and financial statements, for the 12-month period preceding his separation from employment. The claimant should be questioned about whether his parents reimbursed him for the food and medication purchases he made on their behalf during this period as well. If necessary, the Administrative Law Judge shall adjourn the hearing to allow the claimant the opportunity to provide the receipts of any unreimbursed expenditures for necessities made on his parents' behalf during the 12- months period preceding his resignation.

The claimant should also be confronted with his written request for a hearing dated October 16, 2022 and given an opportunity to explain why he stated in this document that he resigned to relocate in order to help his son care for his daughter but did not mention a need to relocate due to personal financial difficulties in New York and to care for his father. This document should then be entered into evidence. The claimant should also be questioned about the discrepancy between his statement in Hearing Ex 1 that his parents moved to Alabama first and he subsequently quit his job to relocate there after learning that his father now needed a caretaker, and his sworn testimony that he and his parents moved to Alabama together.

Further testimony and evidence should be taken from the claimant on when it became medically necessary for him to provide care for his father and whether that need was determined by a medical professional prior to the claimant's resignation; if it was, the claimant should provide written documentation of same. The claimant should also be questioned as to what the care entails and whether alternate care was available in New York.

The claimant further shall be questioned in detail about the alleged mistreatment he received after he requested a raise in pay, including who mistreated him and how; what steps he took to have the situation addressed before resigning; and how the employer responded.

The employer should produce owner Stephen Miller, Michael Hoopingarner, and the second owner referenced by the claimant at the prior hearing but not named. They should be questioned about their knowledge of the claimant's

reason(s) for resigning and their interactions with the claimant in regard to same. They should also be questioned about what, if any, concerns the claimant brought to their attention before resigning; how they responded to those concerns; and what remedies were available to the claimant so that he could continue in his employment.

Prior to the remand hearing, the employer should arrange with the Hearing Section to review the claimant's testimony from the February 14, 2023 hearing and Hearing Exhibit 1. The employer shall be given an opportunity to cross-examine that testimony and voice objections, if any, to the entry of the exhibit.

The parties may produce any other relevant witnesses or documents. The Judge may take any other testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER